

Persons who permanently affix tangible personal property to real estate, thereby making improvements to real estate, are considered to be construction contractors. In Illinois, construction contractors are deemed to be the users of the items that they permanently affix to realty and owe Use Tax on the cost price of the tangible personal property that they so affix to real estate. See 86 Ill. Adm. Code 130.2075. (This is a GIL).

December 21, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 5, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

1. Wisconsin contractor fabricates **and** installs custom cabinetry to a Homeowner in Illinois.

...Does he owe sales tax? Use tax? and if so, where??

(b) Same as above **but** sale is to an Illinois Contractor or architect, is sales tax or use tax due and to what state?
2. Same scenario as above (Homeowner, Contractor...Illinois) **but without** installation, to what state is sales tax or use tax due??
3. Wisconsin fabricator sells **and** installs **factory-made** furniture (made in Wisconsin) to a Homeowner in Illinois, where is sales tax due? OR to a Contractor in Illinois,where is sales tax due??or is use tax due??
4. Same as #3 **but without** installation, Homeowner in Illinois OR contractor in Illinois
5. Contractor sells free-standing furniture from its store-front in Wisconsin to Illinois customers. What is sales tax if furniture is (1) custom-made by contractor? (2) factory fabricated?

We are only able to respond to your questions with regard to Illinois tax. For information regarding taxes due in another state, you should consult the authorities in that state.

Persons who permanently affix tangible personal property to real estate, thereby making improvements to real estate, are considered to be contractors. In Illinois, contractors are deemed to be the users of the items that they permanently affix to realty and owe Use Tax on the cost price of the tangible personal property that they so affix to real estate. See the enclosed copy of 86 Ill. Adm. Code 130.2075. If contractors purchase from Illinois registered suppliers, the tax is to be paid to those suppliers at the rates in effect at the suppliers' location. If purchases are made from out-of-State suppliers not registered to collect Illinois tax, contractors must self-assess this tax and remit it to the Department.

When contractors make "over-the counter" sales of items that are not permanently attached to real estate, they act as retailers. Such sales are subject to the Retailers' Occupation Tax based upon their selling price. If contractors buy parts that they will sell "over-the-counter," they may purchase such parts tax-free by providing suppliers with Certificates of Resale. See 86 Ill. Adm. Code 1405, enclosed, which describes the requirements for Certificates of Resale.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person nor entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax

collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Zehnder*, (1996), 171 Ill.2d 410.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

We encourage you to apply the guidelines above to determine whether your company's retail activities trigger Illinois Use Tax obligations.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.